

ZBA Training: Functions and Q-J Overview

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ZBA

- Created by State Statute and required by state law
- Further authorized by Land Development Code (LDC)
- Governed by Board of Commissioners Rules of Procedure and ZBA bylaws

Other Laws and Policies Governing ZBA

- Open Meetings Law- Official meeting of public body open to any and all people
 - Notice
 - Public Comment
- Public Records Law- all documents regarding public business must be reasonable available for public inspection
 - Reasonable times and availability
 - Exceptions apply
- Henderson County Ethics Policy- no one can serve on an board and the appellate board hearing its appeals
- Electronic Recording Ordinance- all meetings will have audio recording in lieu of written minutes and transcripts

ZBA Functions- Generally

- Interpretation of Ordinances
- Granting Permits
 - Special Use
 - Temporary Use
 - Variances
- Recommend Zoning Amendments
- Appeals

Additional ZBA Functions under LDC

- Initiate text and map amendments
- Flood Damage Prevention Board
- Water Quality Board
- Watershed Review Board
- Watershed Review Board
- Hear appeals of administrative decisions
- Communication Facility Permit
- Special Use, Variance, Temporary Use Permits
- Vested Rights
- Assessment under Soil Erosion Ordinance

Interpretation

- Interpret meaning of parts of ordinance that are unclear
 - Based on intent and clear language of the provisions
- Apply ordinance to particular fact situation
- Correct administrative decisions
- CANNOT vary the ordinance or make legislative decisions
- SHOULD NOT grant based on previous fact patterns- ie same use in same district
 - Interpretation should be the same but must look at all the facts

Requirements for Granting Permits

- Hear evidence and base decision on admissible evidence
 - Admissible- evidence in the record
- Make Findings of Fact
 - What evidence was convincing, credible
- Conclusions of Law
 - Based on type of permit- see cheat sheets
- Conditions- not required but permissible
 - Should be mutually agreed upon
 - Related to the evidence presented

Variance

- Practical Difficulties or Unnecessary hardships
- Reasonable return or reasonable use without variance
- In spirit and intent of law
- Protect public safety and welfare
- Substantial Justice

Special Use Permits

- Does Proposed Project
 - Adversely affect health and safety
 - Detrimental to public welfare
 - Injurious to property or public improvements
 - Minimize glare, dust, etc, and environmental impact
 - Seriously worsen traffic
 - Meet state, local, and federal law
 - Meet goals of comprehensive plan

Appeal

- Burden on applicant to prove why decision not consistent with ordinance
- ZBA hears appeals on several ordinances
- Issues often involve whether decision was correct and what the fines/penalty should be

Quasi-Judicial Hearings

- What- permits, some appeals
- When- application, advertisement, notice
- Where- regular and special meetings, quorum
- Who- Board, applicant, parties with standing
- WHY? FAIRNESS, REASONABLENESS

Difference Between Legislative and Quasi-Judicial

Legislative

- Affects everyone, all property
- Public hearing- anyone can talk
- Brought by BOC, citizen, group, board, or committee
- Notice to whole community

Quasi-Judicial

- Decision on one property owned by one person
- Only those with standing can talk
- Brought by applicant-owner
- Notice to interested parties

Elements of Quasi-Judicial

- Sworn Testimony, evidence entered, verbatim minutes
- Ability to do direct and cross examination of witnesses
- Limited number of parties, parties can call witnesses
- Burden of proof- on the applicant
- Decision- findings of fact and conclusions of law

Who can Speak?

- Standing- Aggrieved person- who has special interest separate from rest of community
- Representation- only applicant or attorney can speak for applicant (also true for other parties)
- Hearsay- statements by a person where person is not available for questioning

Questions